

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action dated September 17, 2007 ("Office Action"). At the time of the Office Action, Claims 1-6 and 8-18 were pending and rejected in the Application. Applicant amends Claims 1 and 14 without prejudice or disclaimer. The amendments to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 102 Rejection

The Examiner rejects Claims 1-6 and 8-18 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,732,078 issued to Arango (hereinafter "*Arango*"). This rejection is respectfully traversed for the following reasons.

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>1</sup> In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."<sup>2</sup> In regards to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic."<sup>3</sup> Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.<sup>4</sup>

In the recent OA, the Examiner mistakenly states: "...Applicant did not claim an accounting record." This is not correct, as Independent Claim 1 clearly recites an accounting

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<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

<sup>3</sup> MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

<sup>4</sup> MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

record. For purposes of clarity and as a courtesy to the Examiner, Applicant (although not obligated to do so) has provided additional information regarding the accounting record. Currently, no reference of record, including *Arango*, offers an architecture in which *the accounting record including a time stamp for a first packet in the first one message, a time stamp for a recent packet in the first one message, a cumulative count for a number of packets in the first one message, and a cumulative count for a number of bytes in the first one message.* These limitations are provided for in Independent Claim 1, but no reference of record includes such elements. These highlighted limitations are important in the context of providing granular accounting data for the overall system.

For at least these reasons, Independent Claim 1 is easily allowable over any cited reference. The other Independent Claims recite limitations similar, but not identical, to those recited in Independent Claim 1. Therefore, these claims are also allowable, for example, for the same reasons as identified above. Additionally, the corresponding dependent claims from these Independent Claims are also patentably distinct for analogous reasons.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

The Commissioner is hereby authorized to charge an amount of \$810.00 to satisfy the request for continued examination fee of 37 C.F.R. §1.17(e) to Deposit Account No. 02-0384 of Baker Botts L.L.P. In addition, the Commissioner is hereby authorized to charge any discrepancies or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214-953-6675.

Respectfully submitted,

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